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REPLY TO Grand Rapids

December 10, 1992

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: MM Docket No. 92-260 (Cable Home Wiring)

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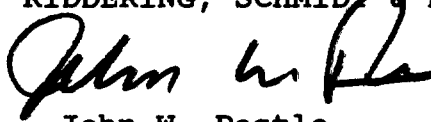
Dear Sir or Madam:

Enclosed for filing in the above referenced docket, please find an original plus nine copies of the reply comments of the Michigan Municipal Electric Association. An additional copy is provided as well which we would appreciate your time stamping and returning to the undersigned at 171 Monroe Avenue, N.W., Grand Rapids, Michigan 49503.

With best wishes,

Very truly yours,

VARNUM, RIDDERING, SCHMIDT & HOWLETT


John W. Pestle

JWP/kel
Enclosures

cc: MMEA - General file (w/encl.)
Chron file (w/encl.)

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the)
Cable Television Consumer)
Protection and Competition)
Act of 1992)
)
Cable Home Wiring)

MM Docket No. 92-260

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DEC 14 1992

FCC - MAIL ROOM

To the Commission:

**THE MICHIGAN MUNICIPAL ELECTRIC ASSOCIATION'S
REPLY COMMENTS IN SUPPORT OF
OPEN ACCESS TO CABLE HOME WIRING**

Pursuant to Sections 1.414 and 1.419 of the Commission's Rules and the Commission's November 6, 1992 Notice of Proposed Rule Making ("NPRM"), the Michigan Municipal Electric Association ("MMEA") respectfully submits its comments to encourage the Commission to adopt rules on cable home wiring which foster competition in furtherance of the objectives of the Cable Television Consumer Protection and Competition Act of 1992 (the "Act").

MMEA respectfully indicates its support for the position taken by the American Public Power Association ("APPA") in APPA's comments filed in this docket in favor of open, unfettered access to cable home wiring for multi-channel video distribution providers and other entities.

I. MMEA REPRESENTATIVES

All communications and correspondence relating to this matter should be directed to the following representatives of MMEA:

Mr. Gary Zimmerman
Executive Vice President
Michigan Municipal Electric Association
809 Centennial Way
Lansing, Michigan 48917
(517) 323-8346

Mr. John W. Pestle
Varnum, Riddering, Schmidt & Howlett
Suite 800, 171 Monroe Avenue, N.W.
P.O. Box 352
Grand Rapids, Michigan 49503
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II. MMEA'S INTERESTS IN THIS MATTER

MMEA is the trade association for municipally owned electric systems in Michigan. There are 43 such systems ranging from the City of Detroit to small communities in rural areas. Collectively they provide electric service to 700,000 people and street lighting service to an additional 1 million people.

Five cities with municipal electric systems in Michigan own and operate their own cable systems. Several others have investigated or are investigating creating municipally owned cable systems in order to serve the cable-related needs of their community at reasonable rates and provide competition to the incumbent cable operator.

MMEA files these comments due to the importance of fair access to home cable wiring to having meaningful competition in the cable television area. In particular, MMEA wishes to bring to the attention of this Commission the experience of several Michigan cities on points directly related to this rule making.

This experience includes that of the City of Negaunee, a small community (population 4,700) in Michigan's Upper Peninsula. Negaunee created its own municipally owned cable system in 1985 to

compete with the incumbent cable operator (~~now~~ a TCI affiliate). The City and TCI systems have competed door-to-door ever since. Currently, the City system has about two-thirds of the cable subscribers, due in part to rates that are roughly 30% below TCI's. However, there were seven years of litigation against the City by TCI which raised anti-trust, first amendment and various other issues. The City's access to home cable wiring was a significant part of this litigation and an issue on which the City ultimately prevailed (the City won most issues in the trial court and the case was settled on appeal).

III. MMEA'S COMMENTS

MMEA wishes to bring to the attention of this Commission the importance of open access to home cable wiring for meaningful competition for cable TV-type services. With such access, then there is a much greater likelihood of meaningful competition from other cable systems, wireless cable systems, direct broadcast satellite systems, and from other competitors of cable. Without such access, cable companies are likely to be able to maintain their current position where they are effectively able to prevent other multi-channel video competitors from entering the marketplace.

This is because access to home cable wiring is significant in and of itself. And it is because the absence of access to such wiring can be used by the incumbent cable companies --especially in combination with other barriers to entry which are present -- to collectively create such high barriers to entry as to effectively deter many or most competitors.

Many cities, including several ~~MMEA~~ members, are dissatisfied with the service being provided by their local cable operator. They would like to attract a competing cable operator, but have not been able to do so despite the fact that the franchises they have granted are nonexclusive.

Because private competitors will not enter the market, several MMEA cities have conducted feasibility studies about setting up their own municipally owned cable systems. One of the obstacles identified in the studies is the likely or probable lack of access to existing customer premises wiring.

This point is reinforced by the experience of the City of Negaunee, which as noted above, created its own cable system eight years ago to compete head-to-head with a TCI affiliate.

One of the significant points in TCI's lawsuit was the cable company's attempts to prevent the City from using the wiring which the cable company had installed in various houses and apartment buildings. The City obtained documents which showed that, in fact, the cable company had turned the customer premises wiring over to the customer at the time the wiring was installed. Despite this, the cable company actively litigated this point in its multi-year civil suit against the City, but the City ultimately prevailed for the reason indicated.

MMEA notes that in the Negaunee situation one of the more contentious issues on customer premises wiring related to apartment buildings and other multi-unit dwellings. This was apparently for two reasons: First, for multi-unit dwellings rewiring a whole building for cable would be expensive, perhaps damaging to the

building and in some cases impossible as a practical matter. Second, TCI probably objected more in these situations because typically apartment buildings are lucrative customers (one drop can serve many customers) which it did not want to lose and which it did not want its competitor to acquire.

MMEA supports the position taken by the American Public Power Association in its filings in this docket.


IV. CONCLUSION

MMEA wishes to reinforce with this Commission the importance of this rule making to creating effective competition to cable television. As Congress effectively found, home cable wiring can be a "bottleneck" which by itself or in combination with other matters creates barriers to entry which prevent competition and keep rates high and service low.

MMEA supports the positions taken by APPA in APPA's comments in this rulemaking.

The FCC should thus resolve matters in this rule making decisively in favor of competition due to the importance of this issue.

Respectfully submitted this 10th day of December, 1992.


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